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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Grant Albee,

No.

Plaintiff,

VERIFIED COMPLAINT

V.

ITSA Contracting, LLC, an Arizona limited liability company, **Eric Moore and Jane Doe Moore**, a married couple, and **Lance Guest and Jane Doe Guest**,

Defendants.

Plaintiff, Grant Albee (“Plaintiff”), sues the Defendants, ITSA Contracting, LLC, Eric Moore and Jane Doe Moore, and Lance Guest and Jane Doe Guest (“Defendant”) and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for unpaid minimum wages, liquidated damages, attorneys' fees, costs, and interest under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq.; and unpaid minimum wage under the Arizona Minimum Wage Act ("AMWA"), Arizona Revised Statutes ("A.R.S.") Title 23, Chapter 2, Article 8, and unpaid wages under the Arizona Wage Act ("AWA") A.R.S. § 23-350, et seq.

1 2. The FLSA was enacted “to protect all covered workers from substandard
2 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.
3 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees a
4 minimum wage of pay for all time spent working during their regular 40-hour
5 workweeks. See 29 U.S.C. § 206(a).

7 3. The AMWA, A.R.S § 23-362, et seq., establishes a minimum wage within
8 the State of Arizona.

9 4. The AWA, A.R.S. § 23-350, et seq., establishes standards for wage
10 payments to employees within the State of Arizona.
11

JURISDICTION AND VENUE

13 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
14 29 U.S.C. § 201, *et seq.* because this civil action arises under the Constitution and law of
15 the United States. This Court also has subject matter jurisdiction pursuant 28 U.S.C. §
16 1367 because the state law claims asserted herein are so related to claims in this action
17 over which this Court has subject matter jurisdiction that they form part of the same case
18 or controversy under Article III of the United States Constitution.
19

21 6. Venue is proper in this district pursuant to 28 U.S.C. § 1331(b)(ii) because
22 acts giving rise to the claims of Plaintiff occurred within the District of Arizona, and
23 Defendants regularly conduct business in and have engaged in the wrongful conduct
24 alleged herein – and, thus, are subject to personal jurisdiction in – this judicial district.

PARTIES

1 7. At all times material to the matters alleged in this Complaint, Plaintiff was
2 an individual residing in Pima County, Arizona, and is a former employee of Defendant.

3 8. At all material times, Defendant ITSA Contracting, LLC is a limited
4 liability company duly licensed to transact business in the State of Arizona. At all
5 material times, Defendant ITSA Contracting, LLC does business, has offices, and/or
6 maintains agents for the transaction of its customary business in Maricopa County,
7 Arizona.

9 9. Under the FLSA, Defendant ITSA Contracting, LLC is an employer. The
10 FLSA defines “employer” as any person who acts directly or indirectly in the interest of
11 an employer in relation to an employee. At all relevant times, Defendant ITSA
12 Contracting, LLC had the authority to hire and fire employees, supervised and controlled
13 work schedules or the conditions of employment, determined the rate and method of
14 payment, and maintained employment records in connection with Plaintiff’s employment
15 with Defendants. As a person who acted in the interest of Defendant in relation to the
16 company’s employees, Defendant ITSA Contracting, LLC is subject to liability under the
17 FLSA.

20 10. Defendants Eric Moore and Jane Doe Moore are, upon information and
21 belief, husband and wife. They have caused events to take place giving rise to the claims
22 in this Complaint as to which their marital community is fully liable. Eric Moore and
23 Jane Doe Moore are owners of Defendant ITSA Contracting, LLC and were at all
24 relevant times Plaintiff’s employers as defined by the FLSA, 29 U.S.C. § 203(d).

27

1 11. Under the FLSA, Defendants Eric Moore and Jane Doe Moore are
2 employers. The FLSA defines “employer” as any person who acts directly or indirectly
3 in the interest of an employer in relation to employee. Defendants Eric Moore and Jane
4 Doe Moore had the authority to hire and fire employees, supervised and controlled work
5 schedules or the conditions of employment, determined the rate and method of payment,
6 and maintained employment records in connection with Plaintiff’s employment with
7 Defendants. As persons who acted in the interest of Defendant ITSA Contracting, LLC
8 in relation to the company’s employees, Defendants Eric Moore and Jane Doe Moore are
9 subject to individual liability under the FLSA.
10
11

12 12. Defendants Lance Guests and Jane Doe Guest are, upon information and
13 belief, husband and wife. They have caused events to take place giving rise to the claims
14 in this Complaint as to which their marital community is fully liable. Lance Guest and
15 Jane Doe Guests are owners of Defendant ITSA Contracting, LLC and were at all
16 relevant times Plaintiff’s employers as defined by the FLSA, 29 U.S.C. § 203(d).
17
18

19 13. Under the FLSA, Defendants Lance Guest and Jane Doe Guest are
20 employers. The FLSA defines “employer” as any person who acts directly or indirectly
21 in the interest of an employer in relation to employee. Defendants Lance Guest and Jane
22 Doe Guest had the authority to hire and fire employees, supervised and controlled work
23 schedules or the conditions of employment, determined the rate and method of payment,
24 and maintained employment records in connection with Plaintiff’s employment with
25 Defendants. As persons who acted in the interest of Defendant ITSA Contracting, LLC
26
27

1 in relation to the company's employees, Defendants Lance Guest and Jane Doe Guest are
2 subject to individual liability under the FLSA.

3 14. Plaintiff is further informed, believes, and therefore alleges that each of the
4 Defendants herein gave consent to, ratified, and authorized the acts of all other
5 Defendants, as alleged herein.
6

7 15. Defendants, and each of them, are sued in both their individual and
8 corporate capacities.

9 16. Defendants are jointly and severally liable for the injuries and damages
10 sustained by Plaintiff.
11

12 17. At all relevant times, Plaintiff was an "employee" of Defendants as defined
13 by the FLSA, 29 U.S.C. § 201, *et seq.*

14 18. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
15 Defendants.
16

17 19. At all relevant times, Defendants were and continue to be "employers" as
18 defined by the FLSA, 29 U.S.C. § 201, *et seq.*

19 20. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
20 Defendants.
21

22 21. At all relevant times, Plaintiff was an "employee" of Defendants as defined
23 by A.R.S. § 23-362.

24 22. At all relevant times, Defendants were and continue to be "employers" of
25 Plaintiff as defined by A.R.S. § 23-362.
26

27

1 23. Defendants individually and/or through an enterprise or agent, directed and
2 exercised control over Plaintiff's work and wages at all relevant times.

3 24. Plaintiff, in his work for Defendants, was employed by an enterprise
4 engaged in commerce that had annual gross sales of at least \$500,000.
5

6 25. At all relevant times, Plaintiff, in his work for Defendants, was engaged in
7 commerce or the production of goods for commerce.
8

9 26. At all relevant times, Plaintiff, in his work for Defendants, was engaged in
10 interstate commerce.
11

12 27. Plaintiff, in his work for Defendant, regularly handled goods produced or
13 transported in interstate commerce.
14

FACTUAL ALLEGATIONS

15 28. Defendant owns and/or operates as ITSA Contracting, an enterprise located
16 in Arizona.
17

18 29. Plaintiff was hired by Defendants as a carpenter and worked for Defendants
19 for approximately three days, until approximately September 14, 2021.
20

21 30. At all relevant times, Plaintiff worked for Defendants through for threee
22 days and then found a different job.
23

24 31. At all relevant times, in his work for Defendants, Plaintiff worked as a
25 carpenter.
26

27 32. Upon information and belief, Defendants, in their sole discretion, agreed to
pay Plaintiff an hourly rate of \$24.00.
28

29 33. Defendants classified Plaintiff as a W-2 employee.
30

1 34. Upon information and belief, During his employment with Defendant,
2 Plaintiff worked approximately 24 hours.

3 35. Defendant failed to compensate Plaintiff any wages whatsoever for the
4 hours he spent working for Defendant.

5 36. Therefore, Defendants paid Plaintiff no wages whatsoever for any of the
6 hours he worked for Defendants during his employment.

7 37. After the termination of his employment, Plaintiff contacted Defendant in
8 an effort to receive his paycheck and Defendants advised Plaintiff that they were not
9 going to pay him for the hours he worked.

10 38. To date, Defendant has paid no wages whatsoever to Plaintiff for such
11 hours worked.

12 39. As a result of not having paid any wage whatsoever to Plaintiff during his
13 employment with Defendant, Defendant failed to pay the applicable minimum wage to
14 Plaintiff.

15 40. As a result of Defendant's willful failure to compensate Plaintiff any wage
16 whatsoever for such hours worked, Defendant violated 29 U.S.C. § 206(a).

17 41. As a result of Defendant's willful failure to compensate Plaintiff any wage
18 whatsoever for such hours worked, Defendant violated the AMWA, A.R.S. § 23-363.

19 42. As a result of Defendants' willful failure to compensate Plaintiff any wage
20 whatsoever for such hours worked, Defendants violated the AWA, A.R.S., § 23-351.

21 43. Plaintiff was a non-exempt employee.

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23
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1 44. Defendants knew that – or acted with reckless disregard as to whether –
2 their refusal or failure to properly compensate Plaintiff his paycheck would violate
3 federal and state law, and Defendants were aware of the FLSA minimum wage
4 requirements during Plaintiff’s employment. As such, Defendants’ conduct constitutes a
5 willful violation of the FLSA and the AMWA.
6

7 45. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
8 of his rights under the FLSA.

9 46. Plaintiff is a covered employee within the meaning of the FLSA.
10

11 47. Defendants individually and/or through an enterprise or agent, directed and
12 exercised control over Plaintiff’s work and wages at all relevant times.

13 48. Due to Defendants’ illegal wage practices, Plaintiff is entitled to recover
14 from Defendants compensation for unpaid minimum wages, an additional amount equal
15 amount as liquidated damages, interest, and reasonable attorney’s fees and costs of this
16 action under 29 U.S.C. § 216(b).
17

18 49. Due to Defendants’ illegal wage practices, Plaintiff is entitled to recover
19 from Defendants compensation for unpaid wages, an additional amount equal to twice the
20 unpaid minimum wages as liquidated damages, interest, and reasonable attorney’s fees
21 and costs of this action under A.R.S § 23-363.
22

23 50. Due to Defendants’ illegal wage practices, Plaintiff is entitled to recover
24 from Defendants compensation for his unpaid wages at an hourly rate, to be proven at
25 trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon,
26 and his costs incurred under A.R.S. § 23-355.
27

1 **COUNT ONE: FAIR LABOR STANDARDS ACT**
2 **FAILURE TO PAY MINIMUM WAGE**

3 51. Plaintiff realleges and incorporates by reference all allegations in all
4 preceding paragraphs.

5 52. As a result of not paying Plaintiff any wage whatsoever for any of the hours
6 he worked during his employment, Defendant willfully failed or refused to pay Plaintiff
7 the FLSA-mandated minimum wage.

8 53. Defendant's practice of willfully failing or refusing to pay Plaintiff at the
9 required minimum wage rate violated the FLSA, 29 U.S.C. § 206(a).

10 54. Plaintiff is therefore entitled to compensation for the full applicable
11 minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as
12 liquidated damages, together with interest, reasonable attorney's fees, and costs.

13 **WHEREFORE**, Plaintiff, Grant Albee, respectfully requests that this Court grant
14 the following relief in Plaintiff's favor, and against Defendant:

15 A. For the Court to declare and find that the Defendant committed one or more
16 of the following acts:

17 i. Violated minimum wage provisions of the FLSA, 29 U.S.C. §
18 206(a), by failing to pay proper minimum wages;

19 ii. Willfully violated minimum wage provisions of the FLSA, 29
20 U.S.C. § 206(a) by willfully failing to pay proper minimum wages;

21 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
22 determined at trial;

- 1 C. For the Court to award compensatory damages, including liquidated
- 2 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
- 3 D. For the Court to award prejudgment and post-judgment interest;
- 4 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
- 5 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
- 6 forth herein;
- 7 F. Such other relief as this Court shall deem just and proper.

8

9 **COUNT TWO: ARIZONA MINIMUM WAGE ACT**

10 **FAILURE TO PAY MINIMUM WAGE**

11 55. Plaintiff realleges and incorporates by reference all allegations in all

12 preceding paragraphs.

13 56. As a result of not paying Plaintiff any wage whatsoever for the entirety of

14 his employment, Defendant willfully failed or refused to pay Plaintiff the Arizona

15 minimum wage.

16 57. Defendant's practice of willfully failing or refusing to pay Plaintiff at the

17 required minimum wage rate violated the AMWA, 23-363.

18 58. Plaintiff is therefore entitled to compensation for the full applicable

19 minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to

20 twice the underpaid wages as liquidated damages, together with interest, reasonable

21 attorney's fees, and costs.

22 25 **WHEREFORE**, Plaintiff, Grant Albee, respectfully requests that this Court grant

23 the following relief in Plaintiff's favor, and against Defendant:

- 1 A. For the Court to declare and find that the Defendant committed one or more
2 of the following acts:
3 i. Violated minimum wage provisions of the AMWA, A.R.S. § 23-
4 363, by failing to pay proper minimum wages;
5 ii. Willfully violated minimum wage provisions of the AMWA, A.R.S.
6 § 23-363 by willfully failing to pay proper minimum wages;
7
8 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
9 determined at trial;
10
11 C. For the Court to award compensatory damages, including liquidated
12 damages pursuant to A.R.S. § 23-364, to be determined at trial;
13
14 D. For the Court to award prejudgment and post-judgment interest;
15
16 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
17 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
18 herein;
19
20 F. Such other relief as this Court shall deem just and proper.

21 **COUNT THREE: ARIZONA WAGE ACT**
22 **FAILURE TO PAY WAGES DUE AND OWING**

- 23 59. Plaintiff realleges and incorporates by reference all allegations in all
24 preceding paragraphs.
- 25 60. As a result of the allegations contained herein, Defendants did not
26 compensate Plaintiff wages due and owing to him.
- 27 61. Defendants engaged in such conduct in direct violation of A.R.S. § 23-350.

1 62. As such, unpaid wages for such time Plaintiff worked are owed to Plaintiff
2 for the entire time he was employed by Defendants.

3 63. Defendants knew that – or acted with reckless disregard as to whether –
4 their refusal or failure to properly compensate Plaintiff over the course of his
5 employment would violate federal and state law, and Defendants were aware of the
6 Arizona Wage Act's requirements during Plaintiff's employment. As such, Defendants'
7 conduct constitutes a willful violation of the Arizona Wage Act.
8

9 64. Plaintiff is therefore entitled to compensation for his unpaid wages at an
10 hourly rate, to be proven at trial, in an amount that is treble the amount of his unpaid
11 wages, plus interest thereon, and his costs incurred.
12

13 **WHEREFORE**, Plaintiff, Grant Albee, requests that this Court grant the
14 following relief in Plaintiff's favor, and against Defendants:
15

- 16 A. For the Court to declare and find that the Defendants violated the unpaid
17 wage provisions of A.R.S. § 23-350, et seq., by failing to pay wages due
18 and owing to Plaintiff;
- 19 B. For the Court to award an amount that is treble Plaintiff's unpaid wages
20 pursuant to A.R.S. § 23-355, in amounts to be determined at trial;
- 21 C. For the Court to award prejudgment and post-judgment interest on any
22 damages awarded;
- 23 D. For the Court to award Plaintiff's reasonable attorneys' fees and costs of
24 the action and all other causes of action set forth in this Complaint; and
25
- 26 E. Such other relief as this Court deems just and proper.
27

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 24th day of May, 2022.

BENDAU & BENDAU PLLC

By: /s/ Christopher J. Bendau

Clifford P. Bendau, III

Christopher J. Bendau

Attorneys for Plaintiff

VERIFICATION

Plaintiff, Grant Albee, declares under penalty of perjury that he has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on his personal knowledge, except as to those matters stated upon information and belief, and, as to those matters, he believes them to be true.

Grant Albee (May 24, 2022 15:51 PDT)

Grant Albee